

James R. Condo (#005867)  
Amanda Sheridan (#005867)  
SNELL & WILMER L.L.P.  
One Arizona Center  
400 E. Van Buren  
Phoenix, AZ 85004-2204  
Telephone: (602) 382-6000  
JCondo@swlaw.com  
ASheridan@swlaw.com

Richard B. North, Jr. (admitted *pro hac vice*)  
Georgia Bar No. 545599  
Matthew B. Lerner (admitted *pro hac vice*)  
Georgia Bar No. 446986  
NELSON MULLINS RILEY & SCARBOROUGH, LLP  
Atlantic Station  
201 17th Street, NW, Suite 1700  
Atlanta, GA 30363  
Telephone: (404) 322-6000  
Richard.North@nelsonmullins.com  
Matthew.Lerner@nelsonmullins.com

*Attorneys for Defendants*  
*C. R. Bard, Inc. and*  
*Bard Peripheral Vascular, Inc.*

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF ARIZONA**

IN RE: Bard IVC Filters Products Liability     MDL NO. 15-02641-PHX-DGC  
Litigation

This Document Relates to:

VICKI WETZEL,

Plaintiff,

Case No. CV-15-01667-PHX-DGC

v.

C. R. BARD, INC., a New Jersey  
Corporation; AND BARD PERIPHERAL  
VASCULAR INC., an Arizona  
Corporation,

Defendants.

**DEFENDANTS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION TO DISMISS  
PLAINTIFF'S COMPLAINT FOR  
FAILURE TO COMPLY WITH CASE  
MANAGEMENT ORDER NO. 5**

Pursuant to Fed. R. Civ. P. 12(b) Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. ("Bard") respectfully move this Court to dismiss Plaintiff's Complaint for failure to comply with the terms of Case Management Order No. 5 pertaining to timely service of Plaintiff Profile Forms ("PPF").

### I. PROCEDURAL HISTORY

On May 12, 2014, Plaintiff filed her initial Complaint in the United States District Court for the Eastern District of Pennsylvania. *See* Case No. Case # 4:14-CV-02729-GP [Doc. 1]. On May 18, 2015 Multiple plaintiffs filed a Motion for Transfer of Actions for Coordination of Consolidation Under 28 U.S.C. §1407 which included Plaintiff's complaint, and, on August 24, 2015, a member case was opened in MDL 2641, *In Re: Bard IVC Filters Products Liability Litigation*. [Doc. 1, and 22, respectively]. Subsequently, Bard was served with a copy of the Summons and Complaint on May 21, 2014. *See* Waiver Transmittal letter with Bard's "date received" stamp, attached hereto as Exhibit A. On December 17, 2015, this Court entered Case Management Order No. 5 [Doc. 365] (the "Order") which ordered, in part:

Each plaintiff in currently filed cases . . . shall submit a completed PPF to defendants within 60 days of the date of this Order.

*Id.* at 1:18-19. The Order further made clear that:

If a plaintiff does not submit a PPF within the time specified in this Order, defendants shall mail an overdue letter by e-mail and U.S. mail to Plaintiffs' Co-Lead Counsel and the plaintiffs' individual representative counsel, stating that defendants may move to dismiss that plaintiff's case within 20 days of receipt of the letter. If no PPF is received within those 20 additional days, defendants may move immediately to dismiss that plaintiff's case.

*Id.* at 2:12-16.

Plaintiff's PPF was due to be served no later than 60 days from the date of the Order, to wit: February 16, 2016, but Bard was not served with Plaintiff's PPF by that date. Subsequently, on February 22, 2015, counsel for Bard sent Plaintiff's Co-Lead Counsel and individual representative counsel an overdue letter via email and U.S. Mail notifying

Plaintiff's counsel of the overdue PPF, and Bard's right under the Order to move to dismiss the Complaint if a PPF was not served within 20 days of receipt of the overdue letter, to wit: March 14, 2016. *See* email and letter from Sanjay Ghosh, attached as Exhibit B. To date, Bard has not received a PPF from the plaintiff in response to its overdue letter.

## II. ARGUMENT AND CITATION TO AUTHORITY

The Ninth Circuit has ruled that at least one federal district court sitting over an MDL action did not abuse its discretion in dismissing certain plaintiff's complaints for failure to comply with case management orders related to service of plaintiff fact sheets. *In re: Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1232-34 (9th Cir. 2006).

Here, the Court entered an Order governing the timely service of PPFs, and providing a clear protocol for sending and responding to PPF overdue (and deficiency) letters. Plaintiff failed to serve a PPF within 60 days of the Court's Order, and then failed to serve a PPF within 20 days of receiving the overdue letter; thereby, delaying the discovery process and forcing Bard to incur the cost of filing this Motion. Accordingly, Plaintiff's Complaint may be dismissed by the Court pursuant to the terms of Case Management Order No. 5 [Doc. 365].

WHEREFORE, Bard respectfully requests that this Court enter an Order dismissing Plaintiff's Complaint for the foregoing reasons. For the Court's convenience, a proposed order is attached as Exhibit C.

This 11<sup>th</sup> day of April, 2016.

s/Richard B. North, Jr.  
Richard B. North, Jr.  
Georgia Bar No. 545599  
Matthew B. Lerner  
Georgia Bar No. 446986  
NELSON MULLINS RILEY & SCARBOROUGH, LLP  
Atlantic Station  
201 17th Street, NW / Suite 1700  
Atlanta, GA 30363  
PH: (404) 322-6000  
FX: (404) 322-6050  
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SNELL & WILMER L.L.P.  
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400 E. Van Buren  
Phoenix, AZ 85004-2204  
PH: (602) 382-6000  
JCondo@swlaw.com  
ASheridan@swlaw.com

**Attorney for Defendants C. R. Bard, Inc. and  
Bard Peripheral Vascular, Inc.**

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on April 11, 2016, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send notification of such filing to all counsel of record.

s/Richard B. North, Jr.  
Richard B. North, Jr.  
Georgia Bar No. 545599  
NELSON MULLINS RILEY & SCARBOROUGH, LLP  
Atlantic Station  
201 17th Street, NW / Suite 1700  
Atlanta, GA 30363  
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FX: (404) 322-6050  
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